

1 Edmundo P. Robaina (No. 018125)
2 Thomas T. Griffin (No. 022475)
3 Ashley A. Marton (No. 029442)
4 ROBAINA & KRESIN PLLC
5 5343 North 16th Street, Suite 200
6 Phoenix, Arizona 85016-3231
7 Telephone: (602) 682-6450
8 Facsimile: (602) 682-6455
9 epr@robainalaw.com
10 ttg@robainalaw.com
11 aam@robainalaw.com

12 Attorneys for Plaintiff Cleopatria Martinez

13 UNITED STATES DISTRICT COURT

14 DISTRICT OF ARIZONA

15 Cleopatria Martinez,

16 Plaintiff,

17 vs.

18 Maricopa County Community College
19 District, et al.,

20 Defendants.

No. CV 15-01759-PHX-NVW

**PLAINTIFF'S CONTROVERTING
STATEMENT OF FACTS IN
SUPPORT OF PLAINTIFF'S
RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

21 Pursuant to Fed. R. Civ. P. 56 and LRCiv. 56.1(a), Plaintiff Cleopatria Martinez
22 ("Martinez") submits the following Controverting Statement of Facts in support of her
23 Response to Defendants' Motion for Summary Judgment ("CSOF"). Martinez's
24 separate Statement of Materials Facts in Support of their Motion for Summary
25 Judgment ("PSOF") [Doc. 72], is incorporated herein by reference. For purposes of the
26 instant motion only, Martinez admits the facts stated in Paragraphs 2, 4, 5, 7, 8, 14, 18,
27 22, 23, 24, 27 and 36 of Defendant's Statement of Facts to Support its Motion for
28 Summary Judgment ("DSOF") [Doc. 73] but denies that the facts stated therein are
sufficient to grant summary judgment in this matter. Plaintiffs' responses to the
remaining paragraphs are stated below.

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Response to Defendants' Statement of Facts

1
2 1. Disputed: In response to Paragraph 1, Martinez admits that the Maricopa
3 County Community College District ("MCCCD") 2012-2013 Residential Faculty
4 Policies ("2012-2013 RFPs") were in effect and applied to residential faculty during the
5 2012-2013 school year, but disputes that the effective date was September 1, 2013. The
6 effective date of the policies was July 1, 2012. [PSOF at ¶ 9; Excerpts of Dr. Rufus
7 Glasper Deposition ("Glasper Depo.") at 7:18-8:15, attached hereto as Plaintiff's CSOF
8 Exhibit 1].

9 3. Disputed: In response to Paragraph 3, Martinez admits that the MCCCD
10 2013-2014 Residential Faculty Policies ("2013-2014 RFPs") were in effect and applied
11 to residential faculty during the 2013-2014 school year, but disputes that the effective
12 date was July 1, 2012. The effective date of the policies was September 1, 2013. [PSOF
13 at ¶¶ 11, 12].

14 6. Disputed. In response to Paragraph 6, Martinez disputes the legal
15 conclusion that she had exposed MCCCD to substantial risk of liability for copyright
16 infringement. "Opinion, suggested inferences, legal arguments and conclusions are not
17 the proper subject matter of a Local Rule 56.1 statement. Including legal arguments in a
18 56.1 statement is wholly improper, redundant, unpersuasive and irksome; in short, it
19 advances neither the interests of the parties nor of the court." *Breeser v. Menta Grp.,*
20 *Inc., NFP*, 934 F. Supp. 2d 1150, 1155 (D. Ariz. 2013) (citation omitted), *aff'd sub nom.*
21 *Breeser v. Menta Grp., Inc.*, No. 13-16512, 2015 WL 6919145 (9th Cir. Nov. 10, 2015).
22 Moreover, Defendants' statement is contrary to the evidence. After completion of the
23 November 18, 2013 evidentiary hearing regarding Martinez's dismissal, the Hearing
24 Committee found that:

25 [Phoenix College] failed to carry its burden of proof relating
26 to violation of MCCCD's cash handling rules found in
27 MCCCD Administrative Regulations 1.17, violation of
28 Residential Policy Manual 3.2.4 (relating to financial
interests in unpublished materials), violation of U.S.
Copyright Law and fair use guidelines, and violation of

1 MCCCCD Administrative Regulations 3.2.4 and 3.2.5 related
2 to copyright regulations.

3 [PSOF at ¶ 30].

4 9. Disputed. Paragraph 9 mischaracterizes the facts. The Hearing
5 Committee's Findings of Fact stated:

6 Dr. Martinez read the Copyright Act of 1976 and believed
7 that it authorized her to use small portions of other scholars'
8 work under the "Fair Use" doctrine because she was using it
9 only for classroom teaching purposes on a not for profit
10 basis and her use of the material did not undermine the
11 potential market for the other scholar's work.

12 Per the "Fair Use" doctrine of the Copyright Act, the "use of
13 a copyrighted work... for purposes such as criticism,
comment, news reporting, teaching (including multiple
copies for classroom use), scholarship, or research, is not an
infringement on copyright." 17 U.S. § 107.

14 [PSOF at ¶ 30-32].

15 10. Disputed in part. Martinez admits that MCCCCD Administrative Officials
16 explained their copyright related concerns to her, however, Martinez denies that she
17 continued to ignore federal copyright law. Indeed, the Hearing Committee found that:

18 Per the "Fair Use" doctrine of the Copyright Act, the "use of
19 a copyrighted work... for purposes such as criticism,
comment, news reporting, teaching (including multiple
20 copies for classroom use), scholarship, or research, is not an
21 infringement on copyright." 17 U.S. § 107. [PSOF at ¶ 32].

22 Moreover, Martinez discontinued use of the "lecture notes" in question
23 immediate after being notified of the possible violations by MCCCCD's Vice President of
24 Academic Services, Ronnie Elliot, on or around January 12, 2010. [*See infra* CSOF at
25 ¶¶ 8, 10].

26 11. Disputed in part: Martinez admits that Anna Solley issued the December
27 9, 2010 Directive but denies that there was unacceptable legal risk. The Hearing
28 Committee's binding Findings of Fact, Conclusions of Law, and Recommendations

1 found that Phoenix College, represented by Defendants' current legal counsel, failed to
2 carry its burden of proof relating to violation of MCCCCD's cash handling rules found in
3 MCCCCD Administrative Regulations 1.17, violation of Residential Policy Manual 3.2.4
4 (relating to financial interests in unpublished materials), violation of U.S. Copyright
5 Law and fair use guidelines, and violation of MCCCCD Administrative Regulations 3.2.4
6 and 3.2.5 related to copyright regulations. [PSOF Exhibit 4 at ¶ 63].

7 12. Disputed: Paragraph 12 mischaracterizes the facts and is an improper legal
8 conclusion not supported by the evidence. The Hearing Committee's binding Findings
9 of Fact and Conclusions of Law, found that Phoenix College, represented by
10 Defendants' current legal counsel, failed to carry its burden of proof relating to violation
11 of MCCCCD's cash handling rules found in MCCCCD Administrative Regulations 1.17,
12 violation of Residential Policy Manual 3.2.4 (relating to financial interests in
13 unpublished materials), violation of U.S. Copyright Law and fair use guidelines, and
14 violation of MCCCCD Administrative Regulations 3.2.4 and 3.2.5 related to copyright
15 regulations. [PSOF Exhibit 4 at ¶ 63]. Moreover, the Committee also found that "Dr.
16 Martinez has not used any of the four sets of "lecture notes" since the Spring of 2010
17 when Phoenix College first raised its concerns regarding the notes." [*Id.* at ¶ 24].
18 Martinez also testified at the November 18, 2013 evidentiary hearing that the materials
19 Defendants accused her of allegedly copyrighting were never used after Spring 2010.
20 [DSOF Exhibit 23 (November 18, 2013 Hearing Transcript), at 197:2-13; 203:23 –
21 205:15]. Defendants' legal argument (that she continued to violate copyright laws after
22 the photocopying restrictions were put in place) to the contrary is both mistaken and
23 improper. *Breaser*, 934 F. Supp. 2d at 1155.

24 13. Disputed: Paragraph 13 mischaracterizes the facts. The statement does
25 specify a time frame for the alleged copyright violations that Mr. Sean Garrison
26 reviewed. Attorney Sean Garrison only reviewed Martinez's course material in fall
27 2010. [DSOF Exhibit 23 (November 18, 2013 Hearing Transcript) at 95:3-13].
28 Moreover, at the November 18, 2013 Hearing, Martinez's private copyright expert

1 attorney Fredrick Bellamy testified that the “lecture notes” he reviewed did not violate
2 copyright law because they fell under the “Fair Use” doctrine. [DSOF Exhibit 23
3 (November 18, 2013 Hearing Transcript) at 282:25 – 283:11; PSOF Exhibit 4 at ¶¶ 30-
4 32].

5 15. Disputed: Paragraph 15 mischaracterizes the facts and is an improper legal
6 conclusion not supported by the evidence. The Hearing Committee’s binding Findings
7 of Fact and Conclusions of Law, found that Phoenix College, represented by
8 Defendants’ current legal counsel, failed to carry its burden of proof relating to violation
9 of MCCCCD’s cash handling rules found in MCCCCD Administrative Regulations 1.17.,
10 violation of Residential Policy Manual 3.2.4. (relating to financial interests in
11 unpublished materials), violation of U.S. Copyright Law and fair use guidelines, and
12 violation of MCCCCD Administrative Regulations 3.2.4 and 3.2.5 related to copyright
13 regulations. [PSOF Exhibit 4 at ¶ 63]. Moreover, Martinez never ‘sold’ any material to
14 her students but instead made a set of the materials available to her students to copy at
15 their own expense or offered to copy the materials at Staples if the students agreed to
16 reimburse her for her out-of-pocket copying expenses. [Defendants’ Exhibit 23
17 (November 18, 2013 Hearing Transcript) at 214:15–215:14].

18 16. Disputed: Paragraph 16 mischaracterizes the facts and is opinion not
19 supported by evidence. First, Martinez never ‘sold’ any material to her students but
20 instead made a set of the materials available to her students to copy at their own expense
21 or offered to copy the materials at Staples if the students agreed to reimburse her for her
22 out-of-pocket copying expenses. [Defendants Exhibit 23 (November 18, 2013 Hearing
23 Transcript) at 214:15–215:14]. Martinez did not make any money in reference to the
24 materials. [*Id.* at 214:15–215:14]. Martinez repeatedly testified that she lost money. [*Id.*
25 at 214:15–215:14]. Moreover, the 2012-2013 RFPs state, “Faculty will determine
26 curriculum and relevant subject matter for course, recommend the appropriate
27 pedagogy, textbooks and other material relevant to teaching their subject.” (RFP 3.1.)
28 [PSOF Exhibit 2 at -11-]. The spirit of ‘academic freedom’ for residential faculty goes

1 against the statements made Defendants.

2 17. Disputed: Paragraph 17 is misleading. Martinez never ‘sold’ any material
3 to her students but instead made a set of the materials available to her students to copy
4 at their own expense or offered to copy the materials at Staples if the students agreed to
5 reimburse her for her out-of-pocket copying expenses. [Defendants Exhibit 23
6 (November 18, 2013 Hearing Transcript) at 214:15–215:14].

7 19. Disputed: Paragraph 19 mischaracterizes the facts. At the Pre-Disciplinary
8 Conference, Martinez was not given an opportunity to respond to the charges against
9 her but rather was asked to sign an agreement and felt threatened. [Defendants Exhibit
10 23 (November 18, 2013 Hearing Transcript) at 248:6–250:4].

11 21. Disputed: Paragraph 21 mischaracterizes the facts. Under the 2012-2013
12 RFPs § 3.15., regarding faculty member dismissal, residential faculty have a right to
13 have a Hearing Committee constituted to conduct a hearing regarding the allegations
14 against the faculty member (3.15.4.); and the right to attend the hearing, present
15 testimony, evidence or statements, oral or written, in his/her behalf and be represented
16 by legal counsel (3.15.6). [PSOF at ¶ 23].

17 25. Disputed: Paragraph 25 is based on inadmissible hearsay and lacks
18 foundation. Evidence produced to support motions for summary judgment must be
19 admissible and otherwise adhere to the Federal Rules of Evidence. See Fed.R.Civ.P.
20 56(e)(1). The Ninth Circuit requires that evidence offered in support of a motion for
21 summary judgment be admissible both in form and in content. *Canada v. Blain's*
22 *Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir.1987); *Hamilton v. Keystone Tankship*
23 *Corp.*, 539 F.2d 684, 686 (9th Cir.1976). Thus “evidence containing hearsay statements
24 is admissible only if offered in opposition to the motion. “Because ‘[v]erdicts cannot
25 rest on inadmissible evidence’ and a grant of summary judgment is a determination on
26 the merits of the case, it follows that the moving party's affidavits must be free from
27 hearsay.”” *Quanta Indem. Co. v. Amberwood Development Inc*, 2014 WL 1246144 (D.
28 Ariz., March 26, 2014) citing *Burch v. Regents of the Univ. of Cal.*, 433 F.Supp.2d

1 1110, 1121 (E.D.Cal.2006). Here, Dr. Glasper's affidavit, wherein he states that it was
2 the Hearing Committee that suggested unpaid suspension in a meeting on January 24,
3 2014, is not supported by the evidence and is being suggested for the first time in
4 support of Defendants' motion for summary judgment.

5 26. Disputed: Paragraph 26 based on inadmissible hearsay and lacks
6 foundation. Evidence produced to support motions for summary judgment must be
7 admissible and otherwise adhere to the Federal Rules of Evidence. See Fed.R.Civ.P.
8 56(e)(1). The Ninth Circuit requires that evidence offered in support of a motion for
9 summary judgment be admissible both in form and in content. *Canada v. Blain's*
10 *Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir.1987); *Hamilton v. Keystone Tankship*
11 *Corp.*, 539 F.2d 684, 686 (9th Cir.1976). Thus "evidence containing hearsay statements
12 is admissible only if offered in opposition to the motion. 'Because '[v]erdicts cannot
13 rest on inadmissible evidence' and a grant of summary judgment is a determination on
14 the merits of the case, it follows that the moving party's affidavits must be free from
15 hearsay.'" *Quanta Indem. Co. v. Amberwood Development Inc.*, 2014 WL 1246144 (D.
16 Ariz., March 26, 2014) citing *Burch v. Regents of the Univ. of Cal.*, 433 F.Supp.2d
17 1110, 1121 (E.D.Cal.2006). Here, Dr. Glasper's affidavit, wherein he states that it was
18 the Hearing Committee that suggested unpaid suspension in a meeting on January 24,
19 2014, is not supported by the evidence and is being suggested for the first time in
20 support of Defendants' motion for summary judgment.

21 28. Disputed: Paragraph 28 is misleading. While Martinez and her former
22 counsel, Stephen Montoya, met with Vice Chancellor Bowers on March 7, 2014, it was
23 not a meaningful discussion as Bowers had no authority to overturn the Chancellor's
24 decision. [PSOF at ¶ 22].

25 29. Disputed. Paragraph 29 is misleading in that it suggests that Martinez,
26 through her former attorney, submitted a legal brief to the Governing Board or
27 otherwise received a meaningful opportunity to present her case and for the Governing
28 Board to decide on the imposition of a 16-month unpaid suspension. [See *infra* CSOF at

¶¶ 22-24].

30. Disputed: Paragraph 30 is misleading in that it suggests that Martinez received a meaningful opportunity to present an argument to the Governing Board regarding her suspension. Martinez has never had the opportunity to “argue” her position in front of the Board, rather she has presented, in person (at the “Citizen’s Interim”) or by letter (with the written contents of her presentation) a three-minute presentation regarding her suspension. [Excerpts from Dr. Cleopatria Martinez Deposition (“Martinez Depo.”) at 109:4-19, 112:23-114:14, attached hereto as Plaintiff’s CSOF Exhibit 2]. While Martinez and Stephen Montoya (as an individual and not as Martinez’s attorney) appeared for the March 25, 2014 Board Meeting, it was for the Citizen Interim and the Board could not discuss the issue or take legal action. [Deposition of Rule 30(b)(6) Teresa Toney (“Toney Depo.”) at 10:3-6, 16:8-23, attached hereto as Plaintiff’s CSOF Exhibit 3]. The Citizen’s Interim is opportunity for the public to give a brief statement, limited to five minutes, on matters that may or may not be on the meeting’s agenda [*Id.* at 11:14-17; 16:24-17:4, attached hereto as Plaintiff’s CSOF Exhibit 3]. Martinez and Montoya’s brief statements regarding her suspension were not on the Board’s agenda and the Board meeting minutes demonstrate that the Governing Board did not seek or was not going to seek any further information regarding the suspension. [*Id.* at 8:13-15:8, attached hereto as Plaintiff’s CSOF Exhibit 3].

31. Disputed: Paragraph 31 is misleading in that it suggests that Martinez received a meaningful opportunity to present an argument to the Governing Board regarding her suspension. Martinez had no right under 2013-2014 RFP § 3.11 to have the suspension reviewed by the Governing Board [PSOF ¶ 22], and other than in “Citizen’s Interim” (also known as calls to the public), during which the public is allowed to speak at public Board meetings for approximately five minutes [Toney Depo. at 10:3-6, attached hereto as Plaintiff’s CSOF Exhibit 3], Martinez never spoke to the Board about her situation. Indeed, Martinez has never had the opportunity to

“argue” her position in front of the Board, rather she has presented, in person (at the “Citizen’s Interim”) or by letter (with the written contents of her presentation) a three-minute presentation regarding her suspension. [Martinez Depo. at 109:4-19, 112:23-114:14, attached hereto as Plaintiff’s CSOF Exhibit 2]. Moreover, it is undisputed that the Board never responded Martinez’s concerns, and never made any determinations as to, or any pronouncements with regard to, Martinez’s suspension. [Excerpts from Judy Castellanos Deposition (“Castellanos Depo.”) at 23:24–25:4, attached hereto as Plaintiff’s CSOF Exhibit 4; Glasper Depo. at 51:25-53:9, attached hereto as Plaintiff’s CSOF Exhibit 1]. As a result, Glasper’s action went un-reviewed, Martinez did not work from April of 2014 until the Fall of 2015, and she was without pay or benefits for 16 months. [PSOF ¶ 46].

32. Disputed: For the reasons set forth in Paragraph 31, *supra*.

33. Disputed: For the reasons set forth in Paragraph 31, *supra*.

34. Disputed: For the reasons set forth in Paragraph 31, *supra*.

35. Disputed: For the reasons set forth in Paragraph 31, *supra*.

37. Disputed in Part. While Martinez admits that she never refunded the \$11 to the students, the fallacious basis for the requirement was that Plaintiff violated copyright law and MCCCCD’s cash handling policies. The Hearing Committee found that MCCCCD failed to prove either allegation. [*See supra* ¶ 6].

Plaintiff’s Additional Statement of Material Facts

1. The 2012-2013 RFP § 3.1, titled “Instructional Rights/Academic Freedom,” provides that:

Faculty are entitled to instructional freedom in discussing their subject with students, and they should exercise their best effort to ensure topics are relevant to their subject. Faculty will determine curriculum and relevant subject matter for courses, recommend appropriate pedagogy, textbooks, and other materials relevant to teaching their subject.

[PSOF Exhibit 2 at pg. 50 of 117].

1 2. The 2012-2013 RFP § 3.9 further states that: “Nothing in this policy shall
2 be construed to deny or diminish any individual rights that a member has under the
3 law.” [*Id.*].

4 3. During the times relevant to this matter, Martinez and her colleagues
5 routinely borrowed mathematics problems from other mathematicians to use in their
6 student handouts for educational purposes on a not for profit basis. [PSOF Exhibit 4,
7 Hearing Committee Findings of Fact, Conclusions of Law, and Recommendations,
8 MCCCCD/Martinez03845 at ¶ 6].

9 4. The borrowing of mathematics problems is a longstanding, widespread
10 custom throughout MCCCCD and academia at large. [*Id.* at ¶ 7].

11 5. Instead of requiring her mathematics students to purchase textbooks,
12 Martinez prepared her own course materials and distributed them to her students. [*Id.* at
13 at ¶ 8].

14 6. Martinez believed that the Copyright Act of 1976 authorized her to use
15 small portions of other scholars’ work under the “Fair Use” doctrine because she was
16 using it only for classroom teaching purposes. [*Id.* at ¶ 8; DSOF Exhibit 23 (November
17 18, 2013 Transcript) at 188:6-10].

18 7. Indeed, the Hearing Committee ultimately found that pursuant to the “Fair
19 Use” doctrine of the Copyright Act, the use of copyrighted work for purposes such as
20 teaching (including multiple copies for classroom use) is not an infringement of
21 copyright. [PSOF Exhibit 4, Hearing Committee Findings of Fact, Conclusions of Law,
22 and Recommendations, MCCCCD/Martinez03846 at ¶ 10].

23 8. Despite the applicability of the Fair Use doctrine to Martinez’s use of the
24 textbook materials, on or around January 12, 2010, MCCCCD’s Vice President of
25 Academic Services, Ronnie Elliot sent an email to Martinez notifying her that there
26 were alleged copyright-related problems with the materials she had printed for the Fall
27 2009 and Spring 2010 semester. [*Id.* at ¶ 16].

28 9. Over the next several weeks, other members of MCCCCD’s administration

1 also communicated to Martinez alleged copyright-related concerns. [*Id.* at ¶¶ 18-20 and
2 23-24].

3 10. Thereafter, Martinez did not use any of the “lecture notes” in question.
4 [*Id.* at ¶ 24; DSOF Exhibit 23 (November 18, 2013 Hearing Transcript) at 197:2-13;
5 203:23 – 205:15].

6 11. Martinez, further, obtained written permission from the publisher of
7 Sullivan & Sullivan’s “Precalculus,” to copy materials from their book. [PSOF Exhibit
8 4, Hearing Committee Findings of Fact, Conclusions of Law, and Recommendations,
9 MCCCCD/Martinez03846 at ¶ 28].

10 12. On December 9, 2010, Phoenix College President Anna Solley, concluded
11 that Martinez’s alleged misconduct posed an unacceptable risk of a copyright
12 infringement claim and imposed restrictions on Martinez’s photocopying privileges. [*Id.*
13 at ¶ 36].

14 13. The December 9, 2010 Directive prohibited Martinez from utilizing any
15 course materials of her own creation. [*Id.* at ¶ 41]. Solley noted that violation of the
16 directive would be considered grounds for disciplinary action, up to and including
17 termination. [DSOF Exhibit 20 (December 9, 2010 Directive) at p. 2].

18 14. Instead, Martinez was required to only use course materials that are
19 “approved by the mathematics department” or that are “available in the bookstore for
20 sale to students and that are authored by persons other than [Martinez].” [*Id.*].

21 15. At the beginning of the Fall 2012 semester, Martinez informed her
22 students that they were not required to purchase a course textbook and that she would
23 provide them with her own course materials in lieu of a textbook. [*Id.* at ¶ 44].

24 16. Martinez further did not submit her Fall 2012 materials to the
25 Mathematics Department Chairperson for approval. [*Id.* at ¶ 46].

26 17. On August 25, 2015, Phoenix College Interim President Chris Haines sent
27 a letter to Martinez indicating, in pertinent part, that restrictions imposed by the
28 December 9, 2010 directive were still in effect and that she intended to enforce them.

1 [Plaintiff's Amended Complaint ¶¶ 81-82 and Plaintiff's Amended Complaint Exhibit
2 11; Defendants' Amended Answer ¶¶ 81-82].

3 18. On October 12, 2015, after she resumed her teaching duties, Martinez sent
4 an email to Interim Phoenix College President Chris Haines requesting that she remove
5 the restrictions on her from the 2010 directive. [Plaintiff's Amended Complaint ¶ 87;
6 Defendants' Amended Answer at ¶ 87; A clean copy Plaintiff's Amended Complaint
7 Exhibit 12 (October 12, 2015 email to Haines) is attached hereto as Plaintiff's CSOF
8 Exhibit 5].

9 19. Martinez noted that the basis for the directive (the alleged copyright
10 violations) no longer exists, the directive obstructs Martinez's teaching capacity by not
11 allowing her to write test questions of her own, not allowing her to use examples that
12 she constructs in her daily lectures, and not allowing her to use anything that she
13 develops. [Plaintiff's CSOF Exhibit 5]. Martinez further noted that "the departmental
14 barriers resulting from the directive have placed unjustified stress on [her] spontaneous
15 teaching." [*Id.*; Martinez Depo. at 132:21-136:2, attached hereto as Plaintiff's CSOF
16 Exhibit 2]

17 20. Martinez cited, as an example, the fact that she submitted a test to be
18 approved because the problems that she used were based on material covered in class
19 and addressed the needs of the students; that it was rejected because she did not copy
20 problems directly from the textbook, and the rejection threw off her teaching schedule.
21 [*Id.*].

22 21. She further noted that the restrictions stifle her innovation; place limits on
23 her ability to teach based on the needs of the students and what the students need to
24 learn. [*Id.*].

25 22. The restrictions, however, were not lifted. [Martinez Depo. at 125:14-20,
26 attached hereto as Plaintiff's CSOF Exhibit 2].

27 23. Martinez had no right under 2013-2014 RFP § 3.11 to have the suspension
28 reviewed by the Governing Board [PSOF ¶ 22], and other than in "citizens' interims"

1 (also known as calls to the public), during which the public is allowed to speak at public
2 Board meetings for approximately five minutes [Toney Depo. at 10:3-6, attached hereto
3 as Plaintiff's CSOF Exhibit 3], Martinez never spoke to the Board about her situation.
4 Indeed, Martinez has never had the opportunity to "argue" her position in front of the
5 Board, rather she has presented, in person (at the "citizen's interim") or by letter (with
6 the written contents of her presentation) a three-minute presentation regarding her
7 suspension. [Martinez Depo. at 109:4-19, 112:23-114:14, attached hereto as Plaintiff's
8 CSOF Exhibit 2].

9 24. Moreover, it is undisputed that the Board never responded Martinez's
10 concerns, and never made any determinations as to, or any pronouncements with regard
11 to, Martinez's suspension. [Castellanos Depo. at 23:24-25:4, attached hereto as
12 Plaintiff's CSOF Exhibit 4; Glasper Depo. at 51:25-53:9, attached hereto as Plaintiff's
13 CSOF Exhibit 1].

14 25. As a result, Glasper's action went un-reviewed, Martinez did not work
15 from April of 2014 until the Fall of 2015, and she was without pay or benefits for 16
16 months. [PSOF ¶ 46].

17 DATED this 17th day of April 2017.

18 ROBAINA & KRESIN PLLC

19
20 By /s/ Edmundo P. Robaina

21 Edmundo P. Robaina
22 Thomas T. Griffin
23 Ashley A. Marton
24 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April 2017, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal to the following CM/ECF Registrants:

Pavneet Singh Uppal
Shayna H. Balch
FISHER & PHILLIPS LLP
3200 North Central Avenue, Suite 805
Phoenix, Arizona 85012-2425

Attorneys for Defendants

By /s/ Gaynell Carpenter